



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1994

Mr. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR94-255

Dear Mr. Giddings:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24056.

The University of Texas (the "university") has received a request for information concerning the arrest of a student by university police, including any recorded radio transmissions made by the university police or other agencies. The requestor has also asked to see the "entire contents" of his student disciplinary file, including notes made by an administrator which the requestor alleges were part of the basis for disciplinary action by the university. You have asserted that the arrest information and recorded transmissions are excepted from disclosure by section 552.108. You also contend that the administrator's notes are confidential education records under sections 552.026, 552.101 and 552.114.¹

In Open Records Decision No. 612 (1992) at 3, we considered information in university police department files:

The Texas courts and this office have previously ruled that police offense and arrest records are public records, subject to certain limitations for law enforcement concerns, such as where release of particular information may impede an on-going investigation or

¹It appears from your correspondence that you have already released the front page offense report information to the requestor. See Open Records Decision Nos. 339 (1982); 127 (1976). We assume that you have also provided the requestor access to the records in his disciplinary file so that the only education documents at issue are the administrator's notes.

where release of particular information may raise safety concerns for confidential informants. We see no reason for distinguishing the offense and arrest records of a university campus police department from those of police departments generally. [Citations omitted.]

You state that there is a pending criminal prosecution. Since the information at issue relates to the pending criminal prosecution, it may be withheld under section 552.108. Attorney General Opinion MW-446 (1982) at 2 (evidentiary information is excepted "during the pendency of the investigation and prior to the prosecution of the case"). We note, however, that once this case is closed the information may be withheld under section 552.108 only if its release would unduly interfere with law enforcement and crime prevention. Open Records Decision Nos. 518 (1989) at 6; 434 (1986) at 2; 216 (1978) at 4.²

You have also asserted that the administrator's notes are confidential under sections 552.026, 552.101, and 552.114. Section 552.101 protects information that is made confidential by other law. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 excepts from disclosure education records unless released in conformity with the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. Education records are those records that "contain information directly related to a student and are maintained by an educational agency or institution." 20 U.S.C. § 1232g(a)(4)(A).³ Under the provisions of FERPA, a university student's "education records" may be released to the student himself. 20 U.S.C. §§ 1232g(b)(1)(H)(d). Section 552.114 also provides for a student's education records to be released to the student.

However, you state that the educator's notes are excepted from disclosure under FERPA as

records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

20 U.S.C. § 1232g(a)(4)(B)(i).

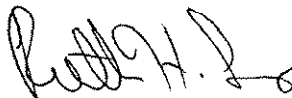
²You have also asserted that the information is excepted by section 552.103 on the basis of the state's pending criminal prosecution. We do not address this issue since we hold that this information may be withheld under section 552.108.

³We note, however, that the arrest and offense records created and maintained by state university campus police departments are not confidential education records under either FERPA or section 552.114. 20 U.S.C. § 1232g(a)(4)(B)(ii); Open Records Decision No. 612 (1992).

We note initially that this provision is only applicable if the notes are in the sole possession of the administrator. The requestor indicates that these notes have been reviewed by other administrators as the basis for disciplinary action taken against the requestor. If that is the situation, these notes must be released to the requestor in accordance with the provisions of FERPA. However, even if the notes have not been so disclosed and are excepted under FERPA, they must be released to the student in accordance with section 552.114 of the Open Records Act. Attorney General Opinion H-447 at 2 (section 552.114 records include information concerning the student). This office has previously been advised by the federal Family Policy Compliance Office of the Department of Education that while FERPA does not require the release of notes that are in the sole possession of the educator, FERPA also does not prohibit the release of such notes. The federal office therefore determined that there would be no conflict between the requirement in section 552.114 that "student records" be made available to the student under the Open Records Act and the provisions of FERPA specifically excepting records in the sole possession of the maker from the definition of "education records" for purposes of FERPA (and thus from FERPA's requirements that "education records" be made available to university students). A copy of that letter is enclosed. We conclude that the requested notes may not be withheld from this requestor under sections 552.026, 552.101, and 552.114.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/JRG/rho

Ref.: ID# 24056
ID# 24680

Enclosures: Copy of Family Policy Compliance Office letter
Submitted documents

cc: Mr. James Hitselberger
University of Texas at Austin
BUR 536
Austin, Texas 78712
(w/o enclosure)